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Extreme poverty and human rights*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, submitted in accordance with Human Rights Council resolution 35/19.

* The present report was submitted after the deadline so as to include the most recent information.

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Report of the Special Rapporteur on extreme poverty and human rights

Summary

When the situation of people living in poverty is addressed in development or human rights frameworks, their civil and political rights are often completely ignored, explicitly excluded from the analysis or mentioned only in passing. As a result, neither the diagnosis of situations nor the resulting policy recommendations are tailored to address the distinctive ways in which people living in poverty are affected by police brutality and sexual and gender-based violence, left unprotected and open to property theft, deprived of their liberty in pretrial detention, confined in their freedom of movement by the criminalization of homelessness, or subjected to electoral fraud and manipulation, to mention just a few of the major violations.

The aim of the present report is to show that: (a) the poor experience violations of civil and political rights both disproportionately and differently from others; (b) their civil and political rights are more or less systematically neglected by mainstream human rights and development actors; (c) the resulting situation crucially and very problematically undermines the principle of the indivisibility of all human rights; and (d) both the human rights and the development communities need to make far-reaching changes in order to ensure that respect for and promotion of all of the human rights of those living in poverty are incorporated into their analytical frameworks, the methodologies they use and the programmes and policies they recommend.

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I. Introduction

1. In most cases, when the situation of people living in poverty is addressed in either the development or human rights frameworks, their civil and political rights are completely ignored, explicitly excluded from the analysis or mentioned only in passing. Attention then moves very rapidly to the problems linked to material deprivation and a lack of resources. As a result, the focus shifts to issues such as the need for welfare support, the provision of specific goods and services, the need for better targeted development assistance or the promotion of economic and social rights, depending on the overall frame of analysis. This tendency is reinforced by the emphasis, both in the international and the national contexts, on measurable definitions that focus either exclusively or largely on per capita income. Thus, in international settings, immense attention is paid to the famous benchmark of the World Bank of $1.25, or now $1.90, a day for determining whether someone is living in extreme poverty, and the solutions sought then aim to increase disposable income rather than to restore basic rights. At the national level, poverty lines are generally used to measure the disposable income available to poor individuals or households. There are, of course, notable exceptions to this general tendency, and they will be mentioned below, but they tend to manifest themselves much more in theory than in practice and they remain exceptions to the rule.

2. It might be expected that the human rights community would adopt a different approach from that used by mainstream development actors. In some contexts it does, but for the most part the reality is that human rights experts and groups do not focus in any detail, either in their fact-finding or their assessments, specifically on the situation of persons living in poverty. As a result, neither the diagnosis of situations nor the resulting policy recommendations are tailored to address the distinctive ways in which people living in poverty are affected by police brutality and gender-based sexual violence, left unprotected and open to property theft, deprived of their liberty in pretrial detention, confined in their freedom of movement by the criminalization of homelessness, or subjected to electoral fraud and manipulation, to mention just a few of the major violations.

3. There seem to be at least three different but related assumptions operating to justify or at least explain this neglect. The first is the assumption that poor people find themselves in essentially the same position as those with access to adequate resources, and that proposals to address any of the standard human rights violations will apply equally well regardless of income or socioeconomic class. But this is patently not the case in practice, as the Special Rapporteur seeks to demonstrate in the present report. The second assumption is that poverty is largely coterminous with forms of discrimination against particular groups, so that examining and reporting on issues such as discrimination against women, particular racial or ethnic groups or those living with disabilities will also succeed in addressing the specific situations of the poorest members of society. But again, this use of a surrogate lens is clearly inadequate for capturing either the diverse characteristics of those living in poverty in most societies or the very specific consequences of the varied forms of discrimination, oppression, stigmatization and violence experienced on a daily basis by many of them. The third assumption, held by both the development and the human rights communities, is that the other community will deal with the specific challenges that arise in relation to the enjoyment of civil and political rights by those living in poverty, whereas in practice neither does so specifically or adequately.

4. The aims of the present report are to substantiate these claims by showing: (a) that the poor experience violations both disproportionately and differently from others; (b) that their civil and political rights are more or less systematically neglected by mainstream human rights and development actors; (c) that the resulting

situation crucially and very problematically undermines the principle of the indivisibility of all human rights; and (d) that both the human rights and development communities need to make far-reaching changes in order to ensure that respect for and promotion of all of the human rights of those living in poverty are incorporated into their analytical frameworks, the methodologies they use and the programmes and policies they recommend.

5. Two caveats are in order at the outset. First, a brief report of this nature must inevitably draw upon research already conducted, while recognizing the fact that there is all too little literature in which the specific impact of civil and political rights violations on those living in poverty is explored. For the most part, that group of people is dealt with as part of the broader community, and distinctive or different impacts are not explored. Second, a significant part of the literature drawn upon relates to the situation in the United States of America, but this is more a reflection of the fact that these issues have been studied more extensively in that context than that the problems are unique to the United States.

II. Disproportionate and different impact of civil and political rights violations on the poor

6. In investigating and documenting violations of civil and political rights, distinctions according to class or socioeconomic status often are not made, thus making it much more difficult to say with authority that those living in poverty are differentially and disproportionately affected by the relevant practices. The tendency both in social sciences and in human rights fact-finding is to disaggregate civil and political rights violations according to factors such as age, gender, race, ethnicity and perhaps sexual orientation, but not according to income percentiles or deciles or to other indicia relating to economic class. Thus, the precise ways in which income poverty, as opposed to multidimensional poverty, affects the nature and frequency of such violations is not captured. As a general rule, there appear to be little data gathered by States on the socioeconomic status of victims of civil and political rights violations.[1] And any such data that are gathered, whether by State or non-State actors, are unlikely to be correlated in such a way as to expose the extent of the victimization of the poor. As a result, the prescriptions identified also ignore these dimensions. For example, it often seems to be assumed that women, people from specific ethnic groups or children will be the most affected and that focusing on them will be a good surrogate for addressing the poverty dimension.

7. The civil and political rights of those living in poverty can be violated in many ways. Policies may be adopted that explicitly seek to exclude the poor from access to or the enjoyment of specific civil and political rights. More subtly and more commonly, laws can be adopted that are neutral at face value but that have a distinctly negative impact on the poor and leave the better off largely untouched. Policies that should benefit all classes equally are adopted, but resource allocations ensure that they actually favour only the better off. And Governments can remain passive and unresponsive in situations in which it is clear that those living in poverty are effectively unable to exercise certain rights or to defend themselves against regular violations of those rights. In such situations, Governments fail to live up to their obligation to take steps to remedy significant and ongoing violations.

8. The analysis that follows is focused on some of the ways in which the civil and political rights of those living in poverty are denied, restricted or deprived of real significance.

[1] See Ryan Cooper, "To end police violence, we have to end poverty", *The Week*, 24 August 2015.

A. Failure to protect the poor from civil and political rights violations

Torture

9. Torture is not reserved only for political prisoners or notorious criminals. In fact, "most of the victims of arbitrary detention, torture and inhuman conditions of detention are usually ordinary people who belong to the poorest and most disadvantaged sectors of society" (see A/64/215 and Corr.1, para. 40; see also A/55/290, para. 35). As noted in the declaration on poverty and torture of the International Rehabilitation Council for Torture Victims, adopted in London in 2011, poverty perpetuates "an enduring state of marginalisation, diminished rights, and reduced protections that make an individual more vulnerable to torture and ill-treatment".[2] Stigmatization and marginalization lead to the complaints of poor people being taken less seriously and reduce those people's access to legal representation (see A/HRC/28/68/Add.3).

Abuse of police power

10. In many countries, police brutality is a problem that largely affects the poor.[3] When the police brutalize members of minority groups, for example, poverty will be a key factor in determining who is actually selected for such treatment. The police are aware that if they assault people who are well off, there is a far greater likelihood that there will be official consequences than if the victim is poor.

Physical integrity and right to security of the person

11. Ironically, although the police are often overactive in enforcing the law against the poor, they are generally underactive in terms of actually preventing and investigating violations of the right to security of individuals living in high-poverty areas. In the first instance, the State is failing to protect the poor from abusive uses of police powers. In the second, the State is failing to protect the poor from fellow citizens. As a result, the poor and marginalized are often subject to common, criminal violence from which they cannot expect any State-provided protection.[4] This problem is not limited to low-income countries. Studies in wealthier countries have shown a "clear correlation" between the most economically vulnerable groups and exposure to violent crime.[5] Furthermore, the bottom 20 per cent of income earners were three times more likely to experience violent crime than the top 20 per cent.[6]

12. The poor's "chronic vulnerability to violence" renders them much more exposed than those who are well off to abuses such as slavery, sex trafficking, sexual violence, property theft, forced labour, assault and oppression.[7] These realities lie "hidden underneath the more visible deprivations of the poor", further ensnaring people in poverty.[8] Inept or non-existent basic public justice systems in

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[2] World Without Torture blog, available from https://worldwithouttorture.org/2011/11/11/the-london-declaration-on-poverty-and-torture/.

[3] See, for example, Deepa Narayan and others, *Voices of the Poor: Can Anyone Hear Us?*, vol. 1 (Washington, D.C., Oxford University Press for the World Bank, 2000), p. 251.

[4] See, for example, Thomas E. McCarthy, ed., *Attacking the Root Causes of Torture: Poverty, Inequality and Violence — An Interdisciplinary Study* (Geneva, World Organization against Torture, 2006), p. 107.

[5] Ibid.

[6] Ibid., p. 111.

[7] Gary Haugen and Victor Boutros, *The Locust Effect: Why the End of Poverty Requires the End of Violence* (New York, Oxford University Press, 2014), p. xii.

[8] Ibid.

lower-income countries mean that most people are living "outside the protection of the law", leading to the creation of "parallel" systems of justice.[9]

Violence against women and children

13. There is evidence that women's socioeconomic status correlates with their exposure to domestic violence,[10] and that men who are living in poverty are more likely to become violent.[11] Women in such situations can be reluctant to disclose this violence or seek care owing to poverty and gender inequality.[12] Women are commonly trapped as they have no other source of maintenance outside their marriage and their families are too poor to offer them shelter.[13] By comparison, women who own or partly own their homes have been found to experience lower levels of physical abuse compared to those who do not.[14]

14. Poor children are also disproportionately affected by maltreatment; indeed, child maltreatment and neglect is concentrated among "the poorest of the poor".[15] Where there is high unemployment and concentrated poverty, parental behaviour is altered and abuse rates and violent behaviour towards children are higher.[16] Poverty is also a risk factor for child abuse and child marriage.[17]

Privacy

15. In pregnancy, poor women who seek prenatal care provided by the State are often provided with assistance only if they effectively give up their right to privacy. They are required to provide information about their sexual, family and financial relationships, their emotional status and their future goals, and to undergo counselling in relation to nutrition and alcohol, tobacco and other drugs.[18]

Conclusion

16. The predictable response to many of the foregoing observations is that it is only logical that poor people, because of their predicament, are more exposed to violence. But such a dismissive approach ignores the fact that the State should be taking additional and tailored measures to address that added vulnerability, rather than dismissing the problem as being somehow inevitable.

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[9] Ibid., p. xiv.

[10] Sana Ashraf Chatha, Khalil Ahmad and Karim Sajjad Sheikh "Socioeconomic status and domestic violence: a study on married women in urban Lahore, Pakistan", *South Asian Studies*, vol. 29, No. 1 (January-July 2014), pp. 237-246.

[11] This is exacerbated by conflict and war: see World Bank, "Violence against women and girls", 12 January 2017. Available from www.worldbank.org/en/topic/socialdevelopment/brief/violence-against-women-and-girls; see also Jennifer L. Solotaroff and Rohini Prabha Pande, *Violence against Women and Girls: Lessons from South Asia* (Washington, D.C., World Bank, 2014) pp. 45-46.

[12] Sidney Ruth Schuler, Lisa M. Bates and Farzana Islam, "Women's rights, domestic violence, and recourse seeking in rural Bangladesh", *Violence against Women*, vol. 14, No. 13 (2008), cited in Solotaroff and Pande, *Violence against Women and Girls*.

[13] Solotaroff and Pande, *Violence against Women and Girls*, p. 59.

[14] McCarthy, *Attacking Root Causes of Torture*, p. 99.

[15] Etienne G. Krug and others, eds., *World Report on Violence and Health* (Geneva, World Health Organization, 2002), p. 68. Available from www.who.int/violence_injury_prevention/violence/world_report/en/; and Panel on Research on Child Abuse and Neglect, Commission on Behavioural and Social Sciences and Education, National Research Council, *Understanding Child Abuse and Neglect* (Washington, D.C., National Academy Press, 1993), p. 9.

[16] Ibid.

[17] Solotaroff and Pande, *Violence against Women and Girls*, p. 89, table 3.5.

[18] Khiara M. Bridges, *The Poverty of Privacy Rights* (Stanford University Press, 2017).

B. Differential criminalization of the poor

Imposition of the death penalty

17. It is widely recognized that "poverty and the death penalty are almost always inextricably bound together".[19] This applies in both higher- and lower-income countries. In one of its first judgments, the Constitutional Court of South Africa held that "poverty, race and chance play roles in the outcome of capital cases", and that whether or not the death penalty is imposed depended not on the predictable application of objective criteria, but on a vast network of variable factors which include "the poverty or affluence of the accused and his ability to afford experienced and skillful counsel and expert testimony" and "his resources in pursuing potential avenues of investigation, tracing and procuring witnesses".[20]

18. In other countries, it was found that "rather than being a variable in the study of death row demographics, social class is basically a constant; virtually every individual sentenced to death falls within the realm of indigence".[21] A study in yet another country, designed to address the "woeful lack of information on the socio-economic profile of prisoners on death row", found that "the death penalty is disproportionately imposed on vulnerable persons along the axes of economic and social parameters". Of more than 350 surveyed prisoners who had been sentenced to death, 74 per cent were deemed to be economically vulnerable.[22]

19. But while the poor are more likely to end up on death row because they lack the resources for adequate defence,[23] the intentional killing of a poor person is less likely to lead to the death penalty than the killing of someone who is well off.[24] One scholar has argued that "the death penalty functions as part of a wider ideological system of power and social control", with the occasional death sentence propping up the ideological image "of justice and safety without representing the state as unduly repressive, and thus allow[ing] expendable others (i.e., the poor) to become scapegoats for the continuance of a system of subjugation".[25]

Drug policies

20. Large-scale crackdowns on drug use invariably end up disproportionately targeting people who are poor, rather than the so-called drug kingpins.[26] In an important exception to the general practice of not classifying victims by their socioeconomic status, Human Rights Watch recently reported that of 32 killings that it was able to examine in detail in one country, all but one of the victims were poor, and "the exception was a middle-class victim who appears to have been killed as a

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[19] Petar Hadji-Ristic, "Rights: poverty and capital punishment go hand in hand, Inter Press Service, 17 October 2017. Available from www.ipsnews.net/2007/10/rights-poverty-and-capital-punishment-go-hand-in-hand/.

[20] Constitutional Court of the Republic of South Africa, *The State v. T. Makwanyane and M. Mchunu*, case No. CCT/3/94, Judgment of 6 June 1995, paras. 51, 273 and 291.

[21] Jennifer L. Tilley, "Social class and capital punishment: a theoretical and empirical analysis", Master of Science dissertation, Eastern Kentucky University, 2014, chap. I.

[22] Anup Surendranath and Shreya Rastogi, "Socio-economic profile", in *Death Penalty India Report*, vol. 1 (New Delhi, Centre on the Death Penalty, National Law University, 2016), p. 104.

[23] Stephen B. Bright, "Counsel for the poor: the death sentence not for the worst crime but for the worst lawyer", *Yale Law Journal*, vol. 103, No. 7 (May 1994); see also https://www.amnesty.org/en/what-we-do/death-penalty/.

[24] Scott Philipps, "Status disparities in the capital of capital punishment", *Law and Society Review*, vol. 43, No. 4 (December 2009).

[25] Tilley, "Social class and capital punishment", abstract.

[26] International Harm Reduction Association and Human Rights Watch, "Thailand's 'war on drugs'", 12 March 2008.

result of mistaken identity".[27] Penalties for drug use are sometimes much more severe in relation to the types of drugs used most frequently by the poor, rather than those preferred by the wealthy.[28]

21. Other purportedly neutral drug policies also overwhelmingly affect the poor. In one country, "fetal assault" laws (also known as "chemical endangerment" or "personhood" laws) target women with pregnancy complications and drug dependence.[29]

C. Failure to promote access to justice for the poor[30]

Legal representation and legal aid

22. The poor face multiple barriers to the realization of their right to legal assistance. For many, access to a lawyer is a financial impossibility. For those who do receive assistance through local legal aid, there is a high likelihood that the quality of legal services is compromised as a result of underfunding and overburdening of legal aid centres, with poor pay attracting inexperienced lawyers.[31] The violation extends beyond criminal defence to civil proceedings, such as housing disputes, immigration proceedings, social security issues, abusive working conditions, workplace discrimination or divorce or custody proceedings.[32] In some jurisdictions, housing and family law and exclusion of representation by legal aid lawyers before welfare and employment tribunals further exclude poor people from accessing justice.[33] The limitations are compounded for women, who commonly enjoy less or no financial independence and who further lose out in means tests for legal aid, as wealth distribution within a household is overlooked.[34]

Bail and pretrial detention

23. Poorer people are less likely to be able to afford bail and so are more likely to be in pretrial detention, in lower- and higher-income countries alike.[35] The poor experience discriminatory pretrial detention practices through their inability to afford a lawyer or pay bonds or bribes for release or improved detention conditions, and they may lose their jobs and homes, causing families to slip deeper into poverty.[36] Other conditions, such as community connections, employment and a

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[27] Human Rights Watch, "License to kill: Philippine police killings in Duterte's 'war on drugs'", (2017), p. 17.

[28] Michael Coyle, "Race and class penalties in crack cocaine sentencing" (Washington, D.C., The Sentencing Project, 2002).

[29] Amnesty International, "Criminalizing pregnancy: policing pregnant women who use drugs in the USA", executive summary and pp. 29-30.

[30] The barriers the poor face to access justice have been well documented by the previous mandate holder; see A/67/278.

[31] Magdalena Sepúlveda Carmona and Kate Donald, "Access to justice for persons living in poverty: a human rights approach", Finland, Ministry of Foreign Affairs (2014). Available from http://socialprotection-humanrights.org/resource/access-to-justice-for-persons-living-in-poverty-a-human-rights-approach/.

[32] Ibid.; see also A/67/278, para. 62.

[33] Sepúlveda and Donald, "Access to justice for persons living in poverty".

[34] Ibid.; see also A/67/278, para. 63.

[35] Lukas Muntingh and Jean Redpath, "The socioeconomic impact of pretrial detention in Kenya, Mozambique and Zambia" (Johannesburg, Dullah Omar Institute and Open Society Initiative for Southern Africa, 2016). Available from at http://acjr.org.za/resource-centre/socio-economic-impact-web-lowres.pdf.

[36] Open Society Foundations, *Pretrial Detention and Torture: Why Pretrial Detainees Face the Greatest Risk* (New York, 2011); see also www.opensocietyfoundations.org/sites/default/files/factsheet-gcptj-overview.10262012.pdf.

fixed address, are often attached to bail and can be difficult or impossible for persons living in poverty to satisfy.[37] The unaffordability of bail for the poor means that people who in many instances are never found guilty of any crime, and possibly are never even charged, end up serving time.[38] The financial implications of being locked up and unable to pay bail commonly pressures people to plead guilty, irrespective of whether they committed the alleged offence.[39] Pretrial detention also impedes a person's ability to meet with lawyers and obtain character witnesses, and it may cause them to lose their employment or social housing, reducing their chances for a suspended or community sentence (see A/67/278).

Charges, court fees and deposits

24. In addition to bail and bribes to avoid pretrial detention, formal court processes are expensive and often alienating for the poor. Court fees, legal documents, photocopies and telephone calls all demand resources that those living in poverty may simply not be able to muster.[40] Civil matters incur filing fees and the risk of paying the legal costs of a successful opposing party, both of which disincentivize poorer people, especially women, from instituting actions such as divorce proceedings, child custody claims or inheritance claims (see A/67/278). Costs of transport to court, accommodation and loss of income provide further barriers for the poor to access the formal legal system, especially for people living in rural areas (ibid., pp.45-46).

Families' rights

25. In criminal matters, the ramifications of an arbitrary criminal justice system that discriminately affects the poor extends well beyond indigent defendants to the families of defendants, perpetuating cycles of poverty.[41] In some African countries, the detention of poor migrant workers in urban centres cuts off financial flows to family members in rural areas and further forces families into poverty as they are forced to sell assets or borrow money as a result of the detention.[42] Travel costs to visit detained family members can also be "prohibitive" owing to extreme economic vulnerability.[43] As stated by Lukas Muntingh, Jean Redpath, "in effect, it is the poor who are subsidizing imprisonment".[42] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has frequently advised Governments to facilitate more frequent family visits "by providing transportation and other support for indigent families" (see A/HRC/34/54/Add.2).

D. Undermining the right to political participation of the poor

26. The rights of every citizen to take part in the conduct of public affairs, to vote and to be elected are recognized in human rights law,[44] but political participation is

[37] Sepúlveda and Donald, "Access to justice for persons living in poverty", p. 24.

[38] Human Rights Watch, *"Not in it for Justice": How California's Pretrial Detention and Bail System Unfairly Punishes Poor People* (2017) p. 2.

[39] Ibid.; see also A/67/278.

[40] Sepúlveda and Donald, "Access to justice for persons living in poverty", p. 20.

[41] See, for example, Surendranath and Rastogi, *Death Penalty India Report*, vol. 2 (New Delhi, Centre on the Death Penalty, National Law University, 2016), executive summary and conclusion.

[42] Muntingh and Jean Redpath, "The socioeconomic impact of pretrial detention in Kenya, Mozambique and Zambia", executive summary.

[43] Surendranath and Rastogi, *Death Penalty India Report*, vol. 2 (New Delhi, Delhi Press, 2016), p. 37.

[44] Human Rights Committee, general comment No. 25 (1996) on participation in public affairs and the right to vote, para. 1.

a right that has proven to be of little practical relevance for the poor. Those living in poverty are disproportionately and differentially affected by practical and legal obstacles to the exercise of their right to political participation. Voting can be undermined by their being preoccupied with subsistence challenges, illness, long waiting lines and registration problems.[45] While those factors do not apply solely to the poor, the implications are greater since they are more often in precarious employment (making it more difficult to find time to vote), have lower access to transportation (to reach polling places), are often less educated (increasing the likelihood that they experience administrative issues in relation to the voting process) and are more often affected by health problems (making it less likely that they can show up to vote).[46]

27. Furthermore, many countries still restrict the voting rights of prisoners or ex-prisoners, a group that disproportionately consists of individuals from lower socioeconomic strata. While global studies on this phenomenon are scarce, research shows that a number of European countries restrict the franchise of some or even all prisoners.[47]

28. As a result, it is hardly surprising that the poor have lower turnout rates than other groups. One study concluded that "the relationships among income, education, and voter turnout are quite strong: the probability of a highly educated or wealthy individual casting a ballot is much, much higher than the probability of a less-educated or poorer individual casting a ballot".[48]

29. The consequences of the underrepresentation of the poor in elections also has ramifications in terms of economic and social rights. Research shows that voter turnout rates in higher-income countries are positively associated with public sector redistribution.[49] That means that staying away on election day further disadvantages the poor. Even when they do vote, corporate domination of lobbying and other decision-making processes serves to promote elite capture of the system. In the European Union, for example, "75% of all associations represented in Brussels are business associations ..., while unions make up less than 5%."[50]

E. Restricting the access of the poor to public places

Criminalization of homelessness

30. If being unable to afford shelter, decent food, a warm bath or even the use of a private toilet is not humiliating enough, homeless people can be, and commonly are, further stripped of their dignity and freedom of movement.[51] The criminalization of

[45] R. Michael Alvarez and others, "2008 survey of the performance of American elections: final report, Caltech, Harvard University, Massachusetts Institute of Technology and University of Utah, 2009, pp. 33-34.

[46] Daniel Weeks, "Why are the poor and minorities less likely to vote?", *The Atlantic*, 10 January 2014. Available from www.theatlantic.com/politics/archive/2014/01/why-are-the-poor-and-minorities-less-likely-to-vote/282896/.

[47] Laleh Ispahani, "Voting rights and human rights: a comparative analysis of criminal disenfranchisement laws", in *Criminal Disenfranchisement in an International Perspective*, Alec Ewald and Brandon Rottinghaus, eds. (New York, Cambridge University Press, 2009).

[48] Jan Leighley and Jonathan Nagler, *Who Votes Now? Demographics, Issues, Inequality, and Turnout in the United States* (Princeton, New Jersey, Princeton University Press, 2014), pp. 45-46.

[49] Vincent Mahler, David Jesuit and Piotr Paradowski, "Electoral turnout and State redistribution: a cross-national study of fourteen developed countries", *Political Research Quarterly*, vol. 67, No. 2 (2014), pp. 361-373.

[50] John Ruggie, "Multinationals as global institution: power, authority and relative autonomy", *Regulation and Governance* (2017), p. 6.

[51] For more on the penalization of poverty, see A/66/265, paras. 29-43.

homelessness is becoming increasingly well documented.[52] Shortages of affordable housing and emergency shelter beds force people onto the streets, where they can then be fined and imprisoned.[53] "Quality of life" offences, such as "camping" in public, sleeping in a public place, begging in public, loitering, sitting or lying down in public places and sleeping in vehicles, can be impossible for the homeless to avoid.[54] To add insult to injury, the enforcement of such laws is very costly; a cruel irony when public funding could instead be directed to poverty alleviation for this group.[55]

III. Systematic neglect of the civil and political rights of those living in poverty

A. Development community

31. Among scholars of development, the work of Amartya Sen stands out as having not only recognized the links between rights and poverty, but as having made those links crucial to the whole development equation:

> Despite unprecedented increases in overall opulence, the contemporary world denies elementary freedoms to vast numbers — perhaps even the majority — of people. Sometimes the lack of substantive freedoms relates directly to economic poverty ... In other cases, the unfreedom links closely to the lack of public facilities and social care ... In still other cases, the violation of freedom results directly from a denial of political and civil liberties by authoritarian regimes and from imposed restrictions on the freedom to participate in the social, political and economic life of the community.[56]

32. Other authors have picked up on these themes. Gary Haugen and Victor Boutros argue that "the world overwhelmingly does not know that endemic to being poor is a vulnerability to violence, or the way violence is ... crushing the global poor". They are particularly critical of the "great agencies of poverty alleviation, economic development, and human rights", which they claim "have purposely avoided participating in the strengthening of law enforcement systems in the developing world".[57]

33. William Easterly has written a powerful, if one-sided, critique of the tyranny of development experts who, on the assumption that they know best, pursue

[52] See, for example, Karen Dolan and Jodi Carr, "The poor get prison: the alarming spread of the criminalization of poverty" (Washington, D.C., Institute for Policy Studies), p. 23; and Deena Zakim, "Housing over handcuffs: the criminalization of homelessness in Hungary", *Suffolk Transnational Law Review*, vol. 37, No. 135 (winter 2014). See also Office of the United Nations High Commissioner for Human Rights, "Hungary's homeless need roofs, not handcuffs" (15 February 2012), available from http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11829&LangID=E; CCPR/C/USA/CO/4, para. 19; and CERD/C/USA/CO/7-9, para. 12.

[53] See Zakim, "Housing over handcuffs"; National Law Center on Homelessness and Poverty, "No safe place: the criminalization of homelessness in U.S. cities", available from www.nlchp.org/documents/No_Safe_Place; and "Housing not handcuffs: ending the criminalization of homelessness in U.S. cities", p. 7.

[54] Terry Skolnik, "Homelessness and the impossibility to obey the law", *Fordham Urban Law Journal*, vol. 43, No. 3 (2016); and National Law Center on Homelessness and Poverty, "No safe place".

[55] National Law Center on Homelessness and Poverty, "No safe place".

[56] Amartya Sen, *Development as Freedom* (Oxford and New York, Oxford University Press, 1999), pp. 3-4.

[57] Haugen and Boutros, *The Locust Effect* (see footnote 7), pp. xi and xv.

technocratic approaches and are well disposed to benevolent authoritarians. These technocrats ignore "the real cause of poverty", defined as "the unchecked power of the state against poor people without rights".[58] With a similar disdain for technocrats, David Kennedy has criticized "expert rule" in fields such as development, human rights and international law by those who pay no heed to the disastrous distributive consequences of their prescriptions, thus leading to "a world of astonishing inequality and injustice". Kennedy, however, is equally critical of those who would replace technocracy with democracy, on the grounds that politics too "has become part of a technical world".[59]

34. If, however, there is a lively debate among scholars, the key international development agencies have remained largely unmoved.

35. The path-breaking study by the World Bank, *Voices of the Poor*, contains a wealth of direct accounts of how the civil and political rights of the poor are constantly violated and how little is ever done in response. Further to the citations incorporated above, it was concluded in the report that:

> Formal institutions are largely ineffective and irrelevant in the lives of the poor. Where government programs of targeted assistance exist, they contribute a little in poor people's struggles to survive, but they do not help them to escape poverty.
>
> ...
>
> The poor feel disempowered and humiliated. Poor people's interactions with representatives of the state leave them feeling powerless, unheard, and silenced.[60]

36. One important concrete example concerns the "impact of a corrupt and brutalizing police force", which is described in the report as "particularly demoralizing for the poor, who already feel defenseless against the power of the state and the elite".[61]

37. In contrast to this deep analytical and empirical awareness of the links between civil and political rights and poverty, the World Bank has not integrated human rights into its operational policies (see A/70/274).

38. Other major international organizations working on issues such as governance, trust and accountability are equally capable of both blocking out the human rights dimension and entirely ignoring the specific challenges that arise in relation to those living in poverty. One example must suffice. For example, in 2017, the Organization for Economic Cooperation and Development (OECD) published a major report on trust and public policy in which it sought to respond to a major erosion of public trust in government in recent years. Competence and values were identified in the report as the two principal drivers of trust, but human rights were never mentioned, nor was there any reference to poverty or to the situation of the poorest. The closest the report comes in that respect is when it is acknowledged that there are "inequalities in access to services" in OECD countries and the example is cited of variation in students' performance in mathematics, which can be explained in part by socioeconomic background. It is indicated that "digitalisation is now usually the key ingredient in efforts to improve access to public services" and that

[58] William Easterly, *The Tyranny of Experts: Economists, Dictators, and the Forgotten Rights of the Poor* (New York, Basic Books, 2013), p. 6.

[59] David Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Woodstock, Oxfordshire, Princeton University Press, 2016), p. 39.

[60] Deepa Narayan and others, *Voices of the Poor* (see footnote 3), p. 83.

[61] Ibid., p. 5.

"accessibility of information is a key enabler of access to services". However, there is no explicit recognition of the fact that the poor largely have much less access to information because of lower levels of access to broadband Internet, thus requiring specific targeted policies to redress the imbalances.[62]

B. Human rights community

39. Several Special Rapporteurs have recently documented the extent to which the two sets of rights are kept artificially separated in the work of many human rights actors (see A/71/310, para. 9, and A/HRC/35/23, para. 88). It is relatively rare, however, to find reports on human rights in which the linkages between poverty and violations of civil and political rights are explicitly explored. A notable exception is a report issued in 2006 by the World Organization against Torture that documented the extent to which "those at the bottom income bracket are more likely to experience police violence and those at the top income bracket, the least".[63]

40. Another important study of techniques for documenting torture found that human rights actors "systematically under perceive the extent of torture and ill-treatment among the poor".[64] This is due to "limitations in social and geographical reach, a concentration on places of detention, the sidelining of protection issues, a search for seemingly innocent survivors, and treating torture as an 'extraordinary' event".[65]

41. For the most part, analyses of civil and political rights violations will note, in passing, that a significant percentage of those killed, tortured or raped were poor (see A/HRC/31/57/Add.4, para. 60). This is important, but such observations should then lead to tailored recommendations designed to address that dimension of the problem. What generally happens, however, is that the poverty dimension is left to some other unspecified intervention, as in the following example, in the interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment (see A/55/290, para. 37):

> The Special Rapporteur has neither the competence nor the expertise to offer solutions to change these bleak realities. He believes, however, that as long as national societies and, indeed, the international community fail to address the problems of the poor, the marginalized and the vulnerable, they are indirectly and, as far as exposure to the risk of torture is concerned, directly contributing to the vicious circle of brutalization that is a blot on and a threat to our aspirations for a life of dignity and respect for all.

42. The right to life is also an excellent illustration of the reluctance of many human rights bodies at the international level to implement the principle of indivisibility. While the Inter-American Court of Human Rights and constitutional courts in countries as diverse as Colombia, India and Kenya have interpreted the right to life in ways that acknowledge the indivisibility of the two sets of rights, the great majority of national and international human rights bodies prefer to keep the two sets of rights rigidly separated from one another. By way of example, a draft general comment under consideration by the Human Rights Committee on the right

[62] Organization for Economic Cooperation and Development (OECD), *Trust and Public Policy: How Better Governance Can Help Rebuild Public Trust*, OECD Public Governance Reviews (Paris, OECD Publishing, 2017), pp. 53-56.

[63] McCarthy, *Attacking Root Causes of Torture* (see footnote 4), p. 76.

[64] Steffen Jensena and others, "Torture and ill-treatment under perceived: human rights documentation and the poor", *Human Rights Quarterly*, vol. 39, No. 2 (May 2017), pp. 413-414.

[65] Ibid.

to life was described as bifurcating "the right to life into two categories: justiciable rights and unenforceable policy aspirations" (see A/71/310, para. 45). The revised version seems to show little improvement in this respect.[66]

IV. Consequences of undermining the principle of the indivisibility of all rights

43. The fundamental principle of the indivisibility of all human rights is seriously undermined by those who neglect the civil and political rights of the poor. When a consensus of sorts first emerged around a concept of universal human rights, it was deeply informed by recognition of the vital importance of the economic part of the overall equation. In a nutshell, the Bolshevik Revolution did much to thrust workers' rights and economic equality onto the international agenda, leading to the creation of the International Labour Organization in 1919 as an integral part of the package of reforms and initiatives after the First World War and to the setting up of the League of Nations. The Great Depression served to emphasize that political rights alone were not sufficient and gave rise in the United States to the New Deal and the adoption of a Keynesian understanding of the appropriate role of the State in managing the economy, not just to stimulate productivity, but also to maximize the social well-being of the citizenry.

44. In the midst of the Second World War, the President of the United States, Franklin Roosevelt, and other Western leaders expressed a strong commitment to the achievement of economic and social goals, as well as the more obvious political goals of the struggle, both domestically and internationally.

45. In 1944, Mr. Roosevelt called for a second bill of rights in the United States, designed to focus on what are now thought of as economic and social rights. He told the Congress in his State of the Union address that:

> We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. "Necessitous men are not free men." People who are hungry and out of a job are the stuff of which dictatorships are made. In our day these economic truths have become accepted as self-evident.[67]

46. Those proposals were to exert a major influence on those subsequently involved in the drafting of the Universal Declaration of Human Rights. Commenting in 1946, one of the drafters of the Charter of the United Nations observed that "the great threat to human freedoms which we have been combating for five years arose out of and was made possible by an environment dominated by unemployment and lacking freedom from want". In his view, the economic and social dimensions of the human rights provisions in the Charter were crucial:

> The Charter, as finally drafted, while placing primary emphasis on security and freedom from fear, also recognizes that there can be no freedom from fear without the observance of fundamental human rights based on freedom from want and on increasing living standards.[68]

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[66] Human Rights Committee, general comment No. 36, draft as of July 2017. Available from www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf.

[67] Franklin Roosevelt, President of the United States of America, State of the Union Message to Congress, Washington, D.C., 11 January 1944. Available from www.presidency.ucsb.edu/ws/?pid=16518.

[68] Herbert V. Evatt, "Economic rights in the United Nations Charter", *The Annals of the American Academy of Political and Social Science*, vol. 243 (January 1946), pp. 4-5.

47. Against such a background, it was no surprise that the Universal Declaration contained a full catalogue of economic, social and cultural rights and did not make any distinction as to their importance in comparison to the more traditional civil and political rights. However, it was by no means due to Mr. Roosevelt only that both sets of rights were included. In fact, the States that pushed for the inclusion of economic and social rights were much more diverse than is commonly acknowledged. To be sure, the apartheid government of South Africa was an outspoken opponent, but much of the rest of the world was strongly supportive. Latin American countries were at the forefront of advocating for their inclusion, and the American Declaration of the Rights and Duties of Man, also adopted in 1948, included recognition of the rights to protection for mothers and children, the preservation of health, well-being, education, work, fair remuneration, leisure and social security. Eastern European countries were supportive, but generally felt that the provisions that were adopted in the Universal Declaration were not sufficiently far-reaching. Western European States were in the process of building up their welfare State provisions and were generally supportive. In the process of drafting the Constitution of India, which coincided with the drafting of the Universal Declaration, Bhimrao Ramji Ambedkar and his allies successfully insisted on the inclusion of a wide range of economic and social rights, albeit characterized as directive principles rather than fundamental rights.

48. During the process of drafting the International Covenants on Human Rights, there was extended debate over whether there would be one or two treaties. In 1950, in a landmark resolution, the General Assembly stated that "the enjoyment of civic and political freedoms and of economic, social and cultural rights are interconnected and interdependent", and decided to include both sets of rights in a single covenant (see Assembly resolution 421 (V), sect. E). However, over the course of the following year or so, a number of countries pushed hard to reverse that decision. Led by the United Kingdom of Great Britain and Northern Ireland and the United States, along with Belgium, India and Lebanon, they succeeded in persuading the Assembly, which adopted its resolution 543 (VI) by a recorded vote of 27 to 20, with 3 abstentions, to adopt two Covenants. It also decided, however, that the two should be submitted simultaneously to the Assembly and adopted at the same time, and should contain as many similar provisions as possible "in order to emphasize the unity of the aim in view" (see General Assembly resolution 543 (VI)).

49. Many different explanations were offered, but the advent of the Cold War had eliminated whatever post-Second World War consensus had prevailed previously. As a result, it was only after the adoption of the two Covenants by the General Assembly in 1966 that efforts began to restore some sort of genuine equilibrium between the two sets of rights. In 1968, the International Conference on Human Rights, held in Tehran, confirmed the doctrine of indivisibility by proclaiming that "since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development".[69]

50. Since the holding of the International Conference in 1968, indivisibility has been an oft-repeated dogma. During the 1970s and 1980s, the approach within the United Nations was, in principle, guided by the recognition that one of the concepts that should guide all future work was that "all human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent

[69] *Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968* (United Nations publication, Sales No. E.68.XIV.2), sect. II, para. 13.

consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights" (see General Assembly resolution 32/130, para. 1 (a)).

51. This formulation was adapted and slightly expanded in the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights, held in Vienna in June 1993, in which it was stated that:

> All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.

52. This survey of developments relating to the current status of the indivisibility doctrine is relevant in order to explain why it is that the international human rights system has struggled to escape from the "silo" approach that has characterized much of its evolution since the adoption of the Charter of the United Nations in 1945. In recent years, a considerable effort has been made to revive the importance of economic, social and cultural rights, but the success of these endeavours has not automatically resulted in a fully integrated approach (see A/HRC/32/31). Since it is generally assumed that the dominant concern in most human rights contexts will be civil and political rights, it has generally been assumed that they will be addressed adequately whenever economic, social and cultural rights are also under consideration.

53. Perhaps the clearest and most significant illustration of this problem in recent years is to be found in the approach adopted with regard to the Sustainable Development Goals. During the drafting process, there was never any doubt that poverty and its elimination would be front and centre in the resulting commitments undertaken by all States. It was thus no surprise that the 2030 Agenda for Sustainable Development begins with a declaration by States that: "we recognize that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development" (see General Assembly resolution 70/1).

54. At the same time, however, as poverty and extreme poverty were being placed at the heart of the international agenda, there was widespread resistance on the part of many Governments to the inclusion of references to specific civil and political rights and to the central concept of accountability. The introductory provisions contain generous references to the goals of realizing and protecting the human rights of all, and characterize the 2030 Agenda overall as being grounded in the Universal Declaration of Human Rights and international human rights treaties and informed by other instruments such as the Declaration on the Right to Development. In the Sustainable Development Goals and indicators, however, specific civil and political rights are strikingly downplayed. Goal 16, which seeks to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels", is to be measured by indicators that focus essentially on violence and insecurity, but not on the much broader agenda of civil and political rights, especially for those living in poverty. Accordingly, the only references to rights per se in the report of the Secretary-General on progress towards the Sustainable Development Goals (E/2017/66) are, briefly, to women's rights and children's rights.

V. Airbrushing the civil and political rights of the poor out of the picture

55. There are many ways in which the human rights community has downplayed the civil and political rights of those living in poverty. In a brief report, it must suffice to mention only two. The first is to use a conceptual lens or paradigm through which to look at poverty, which can actually have the unintended consequence of airbrushing out the specific situation of the poorest members of society. The second is to ignore some of the main provisions in existing human rights law that were designed to focus attention on that group.

A. Linguistic lenses that can obscure the plight of the poor

56. In human rights discourse, as in any field, language makes a huge difference in how an issue is perceived and understood. In terms of the focus of the present report on the civil and political rights of those living in poverty, economists often talk of socioeconomic status or, more frequently today, of deciles or quintiles of the population. Sociologists and perhaps anthropologists may be more likely to talk about class, whether social or economic. Lawyers, however, generally eschew these categories. Sometimes, in the name of equal justice, they might opt not to differentiate among any such categories and instead focus just on individuals who lack access or opportunity. In the human rights field, there are three principal lenses that are used for this purpose: non-discrimination, equality of opportunity, and participation. Each of these will be considered briefly.

57. The case for using a non-discrimination or equality lens for addressing these issues has been argued strongly by the Equal Rights Trust:

> The conceptual link between equality and ESRs is clear. It is an accepted principle of international law that human rights are interdependent, interconnected and indivisible. The Committee on Economic Social and Cultural Rights (CESCR) has noted that equality and non-discrimination are "essential" for the realisation of ESRs. Many of the ESR issues most often tackled by activists are also problems of discrimination against historically disadvantaged groups. Poverty may be both a cause and a consequence of discrimination. Moreover, groups which are particularly vulnerable to status-based discrimination such as, in most contexts, women, ethnic minorities, non-nationals and people with disabilities, are overrepresented among the poor.
>
> The right to equality may have what can be described as a "ratchet effect" upon ESRs. Once the state has made ESR-related provisions for some, the right to equality may be used to argue that it must do so for others.[70]

58. The discrimination lens is thus appropriate because groups of persons living in poverty or extreme poverty in almost any society will consist disproportionately of individuals belonging to groups which are the subject of multiple forms of discrimination, such as women and girls, members of ethnic, racial, religious or linguistic minorities and persons with disabilities. However, the question then becomes whether the discrimination lens is itself sufficient to capture the nature of the challenges confronted by those living in poverty. The concept of intersectionality arguably emerged in part to address this problem by highlighting

[70] Equal Rights Trust, *Economic and Social Rights in the Courtroom: A Litigator's Guide to Using Equality and Non-Discrimination Strategies to Advance Economic and Social Rights* (London, 2014), p. III.

the fact that a given individual or group might suffer from several different, intersecting forms of discrimination. But even if someone is identified as being female, belonging to an ethnic minority or having a disability, this more inclusive definition of the relevant forms of discrimination that might be experienced may still not capture the essence of what it means to be poor in the society in question. Issues such as stigmatization, exclusion and loss of self-respect might need responses that go beyond the purview of many anti-discrimination policies. Linked to this is the question of whether a discrimination lens is then sufficient for the policies that are required in order to bring persons who are living in poverty back into the mainstream of their society to be identified.

59. The second lens, also linked to the principle of equality, is that of "equality of opportunity". It has been argued powerfully, however, that equal opportunity does not in practice ensure anything like equal outcomes. The "opportunities" made available will often be effectively inaccessible to those living in poverty, while at the other end of the spectrum, the well off are better educated, informed and networked, more mobile and better placed to profit from the opportunities. This can also mean that the poor, who cannot avoid indirect and other taxes, will end up cross-subsidizing the wealthy, many of whom will be able to avoid or at least minimize taxes.[71]

60. The third lens is that of "participation". While this could be premised specifically on the right to political participation, it is often used in a much broader sense. Thus, the literature on the rights of persons living in poverty is replete with calls to enable them to participate fully in a wide range of activities. Paragraph 38 of the Guiding Principles on Extreme Poverty and Human Rights provides a good example:

> States must ensure the active, free, informed and meaningful participation of persons living in poverty at all stages of the design, implementation, monitoring and evaluation of decisions and policies affecting them. This requires capacity-building and human rights education for persons living in poverty, and the establishment of specific mechanisms and institutional arrangements, at various levels of decision-making, to overcome the obstacles that such persons face in terms of effective participation. Particular care should be taken to fully include the poorest and most socially excluded persons.

61. These demands in the Guiding Principles touch on extremely important issues. It remains to be seen in practice, however, what these sweeping claims might mean and how they might be interpreted differently or applied specifically to those living in poverty, who, for the most part, are unable to effectively exercise many of their basic civil and political rights. The concern is that this focus on "participation" could become a substitute for more concerted and specific efforts to address the particular situation of the poor when addressing each of the civil and political rights in a given community. In other words, the call to ensure that "the poorest and most socially excluded persons" participate fully in all forms of decision-making risks ringing hollow, given that a great many individuals and groups who are far better off in economic and social terms actually have very little meaningful say in the decisions that affect them. This is not to minimize the importance of participation, but rather to suggest that a more important but neglected dimension is to factor those living in poverty into broader analyses of how voting rights, free speech rights and the like are shaped and implemented in order to achieve the desired results.

[71] Omri Ben-Shahar, "The paradox of access justice, and its application to mandatory arbitration", *University of Chicago Law Review*, vol. 83, No. 4 (2016).

B. Neglecting crucial provisions of human rights law

62. Article 2 (1) of the International Covenant on Civil and Political Rights and article 2 (2) of the International Covenant on Economic, Social and Cultural Rights explicitly require States parties to guarantee that the rights protected under the Covenants will be exercised without discrimination of any kind as to social origin, property, birth or other status. Those references to social origin, property and birth have been virtually ignored by Governments, United Nations human rights bodies and commentators. The significance of such neglect is major but unacknowledged. When the terms were first adopted, in the context of the drafting of the Universal Declaration of Human Rights, extensive consideration was given to their meaning. Delegates were aware of the potentially far-reaching significance of prohibiting discrimination on the relevant grounds. On the basis of an exhaustive review of the travaux préparatoires, Johannes Morsink notes that discrimination on the basis of "property" would have particular importance when linked to one of the substantive rights, such as the right to education, and concludes that the prohibition would, for example, be relevant in situations in which the quality of a child's elementary and secondary education is related to the parents' or guardians' property status.[72] The term "birth" was, in his view, intended to "prohibit discrimination on the basis of inherited legal, social, and economic differences".[73]

63. The leading texts examining the way in which these provisions have been applied in the context of the two Covenants confirm that they have been almost completely marginalized, including in the work of the relevant treaty bodies. In its general comment No. 18 (1989) on non-discrimination, the Human Rights Committee does not address at all the specific significance of the three statuses. Thus, in relation to the International Covenant on Civil and Political Rights, Manfred Nowak explains that "the distinguishing qualities of birth, property and social origin relate to the prohibition of discrimination on the basis of status or class". In his view, this means that "no persons may be privileged or disadvantaged in the enjoyment of Covenant rights simply because they, e.g., are members of the nobility or the working class".[74] In reviewing relevant case law, however, the only context in which these dimensions appear to have been significant relate to the situation of children born out of wedlock.

64. In relation to the International Covenant on Economic, Social and Cultural Rights, in its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, the Committee on Economic, Social and Cultural Rights seeks to spell out what each of the three statuses means. It observes only that "'social origin' refers to a person's inherited social status", and that "property status ... is a broad concept and includes real property (e.g. land ownership or tenure) and personal property (e.g. intellectual property, goods and chattels, and income), or the lack of it".

65. In addressing "birth status", the Committee links it to article 10 (3) of the Covenant, which proscribes "discrimination for reasons of parentage". It goes on, however, to suggest a broader set of contexts in which this ground of discrimination might be relevant:

> Distinctions must therefore not be made against those who are born out of wedlock, born of stateless parents or are adopted or constitute the families of

[72] Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (University of Pennsylvania Press, 1999), p. 113.

[73] Ibid., p. 114.

[74] Manfred Nowak, *United Nations Covenant on Civil and Political Rights: CCPR Commentary*, 2nd ed. (Kehl am Rhein, Germany, and Arlington, Virginia, N.P. Engel Publishers, 2005), p. 56.

such persons. The prohibited ground of birth also includes descent, especially on the basis of caste and analogous systems of inherited status. States parties should take steps, for instance, to prevent, prohibit and eliminate discriminatory practices directed against members of descent-based communities and act against the dissemination of ideas of superiority and inferiority on the basis of descent.[75]

66. Although the Committee on Economic, Social and Cultural Rights addressed the meaning of each of the three statuses in its general comment No. 20, there remains remarkably little jurisprudence in which the provisions have been applied or interpreted. Various national constitutions, such as those of Kenya and South Africa, contain equivalent provisions, but they too do not appear to have been the subject of much attention to date.

67. There is a strong argument to be made that the three statuses are potentially of fundamental importance in terms of the rights of persons living in poverty, many of whom might well be disadvantaged or discriminated against by the State on the basis of their social status, birth or property status. The drafters of the Universal Declaration of Human Rights, who were responsible for the introduction of those concepts into international human rights law, certainly thought so. According to Mr. Morsink, it appears that almost all of the drafters were aware of the far-reaching egalitarian implications of those provisions.[76]

68. The question that then arises is: why have such potentially important provisions of the two Covenants been neglected or marginalized in the five decades since the Covenants were adopted? Several explanations suggest themselves. One is that the provisions have few direct counterparts in national law. Another is that human rights lawyers have assumed that the concerns that the provisions address can be dealt with adequately through other provisions of human rights law. However, this begs the question of why the drafters clearly considered that they brought added value and were necessary additions to the overall catalogue of rights. Yet another is that the provisions are those that address most directly questions relating to socioeconomic status or class and that these are issues that the human rights community has been happy to play down or even exclude from the overall picture.

69. Whatever the explanation, the challenge that lies ahead, especially in the context of giving greater effect to the civil and political rights of those living in poverty, is for the relevant treaty bodies, national courts and civil society to breathe life back into these vital provisions in order to highlight the socioeconomic class dimension that the drafters of international human rights law saw so clearly but that later generations have chosen to ignore.

VI. Conclusions and recommendations

A. Conclusions

70. **A number of conclusions emerge from the foregoing analysis. First, that there are very little systematic data on the socioeconomic background of victims of civil and political rights violations. Second, and perhaps linked to this, is that there is surprisingly little academic work on the issue, although with a few notable exceptions. Third, that where broad policy documents**

[75] Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, paras. 24-26.

[76] Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*, p. 114.

recognize the need to address civil and political rights in anti-poverty efforts, they often remain at a level of generality that renders them largely meaningless in practical policy terms. Fourth, that persons living in poverty are often ignored as a vulnerable group, that the focus on discrimination and equality often overlook this "protected group" and that discrimination cases never relate to socioeconomic class. Fifth, that human rights actors often seem uncomfortable with looking into causal and contextual factors that explain specific violations, because of a purported lack of expertise, but that this leads to the neglect of vital dimensions of the challenge.

71. There are many reasons why this neglect matters. It renders invisible in many contexts one of the major groups of victims of human rights violations. It fails to expose the fact that many civil and political rights violations are rooted in poverty, and that only by addressing that aspect can sustainable solutions be found. It overlooks the fact that where the poor are victimized, those violations may be of a different nature and require different solutions.

B. Recommendations

72. The human rights community has long recognized that an exclusive focus on civil and political rights as they affect specific individuals needs to be complemented by attention to the broader situation affecting vulnerable groups of the population, such as women, children, ethnic minorities and indigenous peoples. But very few human rights actors have given anything more than sporadic or passing attention to the civil and political rights of persons living in poverty. Since this is a group that is most likely to suffer severe and ongoing violations of their relevant rights, a new approach is called for.

73. How exactly this is best done is up to the various actors to determine for themselves. But an important starting point is for both governmental and non-governmental actors to start collecting relevant data so that they are able to identify the extent to which the poor are affected by different types of violations.

74. The next step is to adapt and adjust recommended solutions in order to take into account the factors that render the poor particularly vulnerable and to move beyond the often unwarranted assumption that generalized measures to address violations will necessarily assist that group.